

## **REMARKS**

Applicant thanks the Office for the thorough Non-Final Office Action dated 1/20/2006. The Office rejects all claims (Claim 1-6). Applicant responds herein to each of the Items raised by the Office, and has adopted the Item reference numbers employed by the Office for convenience and administrative ease of the Office.

### **Application File Date**

Applicant wishes to note that the original application was filed on Sept. 9, 2003, which included a Certificate of Mailing noting the same date. The Patent Office currently notes Sept. 11, 2003 as the filing date. Applicant respectfully requests that the Office review the attached material from the Image File Wrapper, correct the file date, and issue a corrected filing receipt.

### **Drawings**

Applicant submits herein direct replacement drawings with cleaner text labels. No new matter is added.

### **Title**

The Office objects to the title of the invention as not being descriptive of the claimed invention. The Applicant has amended the title to a more descriptive title reflecting the claimed invention. Applicant respectfully requests reconsideration and removal of this objection.

### **Item #5: Claims Rejections - 35 USC §101**

The Office rejects claim 6 as being directed to non-statutory subject matter that encompasses printed matter and lacks an embodiment on a computer readable storage medium. As the Office is well-aware, the Beauregard claims refer to computer-readable medium claim or article of manufacture claim wherein such media are viewed as computer elements that define structural and functional interrelationships between the computer program and the rest of the

computer. Since the media permit the computer program's functionality to be realized, they are considered statutory subject matter.

More recently, the term "computer-readable medium" supports a broad definition to include any form of fixed and temporary memory and which includes propagated signals whether wireless or wired as the signals eventually are processed. The Applicant references the Office to the "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" See

[http://www.uspto.gov/web/offices/pac/dapp/opla/preognnotice/guidelines101\\_20051026.pdf](http://www.uspto.gov/web/offices/pac/dapp/opla/preognnotice/guidelines101_20051026.pdf)

The Applicant has amended Claim 6 to clarify the aspects of the elements and the inter-relationships and this rejection is traversed.

**Item #6-8: Claims Rejections - 35 USC §112 Second Paragraph**

The Office rejected Claims 1 – 6 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. A §112 second paragraph rejection has two separate requirements, indefiniteness and failing to claim what applicant regards as the invention. With respect to indefiniteness, the "essential inquiry pertaining to this requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of (1) the content of the particular disclosure, (2) the teachings of the prior art, and (3) the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made." (MPEP §2173.02).

A rejection stating that the claims fail to set forth the subject matter that the applicant regards as the invention is only appropriate where the applicant has stated that the invention is something different from what is defined by the claims (MPEP §2172(a)). There is a presumption that the claims describe the applicant's invention, absent evidence to the contrary.

Applicant has reviewed the claims and made clarifying amendments and also corrected antecedent basis problems. While Applicant believes that this rejection is traversed, the Examiner is hereby authorized, without the need of further contact, to enter an Examiner's Amendment to correct any further cases where antecedent basis is lacking. Applicant believes that this objection is cured.

**Item 9: MPEP 2106 Sec II (C) and 2111.04**

As noted by the Office, claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure. The Office considers the claim language 'adapted to' as being indefinite and that it may raise a question as to the limiting effect of the language in a claim. The determination of whether each of these clauses is a limitation in a claim depends on the specific facts of the case. The claims have been amended removing this language and therefore this objection is cured.

**Item 10: Multiplexer Data Flow**

The Office has indicated that in a multiplexer the data can only flow in one direction. This is incorrect. A multiplexer is generally defined for this field as a device that combines multiple inputs into an aggregate signal to be transported via a single transmission channel. For example, existing products in the marketplace include a multi-channel reconfigurable bidirectional wavelength division multiplexed (WDM) add-drop multiplexer in which all channels can be added/dropped independently in either direction. There is no limitation that the multiplexer be a uni-directional device and, in fact, bidirectional multiplexers are common in this field.

**Item 11: Claims Rejections - 35 USC §102(b)**

The Office rejected claims 1 - 6 under 35 U.S.C. 102(a) as being anticipated by the Applicant's reference manual entitled "Radiance 100 MBPS Redundant Interface Line Cards" and "Radiance 10 MBPS Redundant Interface Line Cards." Claims 1 – 6 are further rejected under 35 U.S.C. 102(b) as being anticipated by the Applicant's reference manual entitled

“Radiance 100 MBPS Redundant Interface Line Cards” and “Radiance 10 MBPS Redundant Interface Line Cards.”

A rejection based on anticipation requires that a single reference teach every element of the claim (MPEP § 2131). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Or stated in another way, a "claim is anticipated only if each and every element as set forth in the claim is found, . . . described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). . . .

The Office correctly notes that on page 22 of the Installation & User Guide for the “Radiance 100 MBPS Redundant Interface Line Cards”, the depicted figure is similar to Figure 1 of the present application. On page 22 of the User Guide, the depicted figure is similar to Figure 2 of the present application. Please note that the User Guide refers to 100MBPS and not 1000MBPS or the corresponding failover programmable delay aspects. These references were submitted in an Information Disclosure Statement by the Applicant. Also note that the Applicant does not specifically acknowledge the priority of this reference. The distinguishing aspects of the present invention are noted herein which traverse the rejection using this reference.

A brief description of the present invention may be helpful and a limited description is provided herein for reference purposes, however it is not intended as limiting the invention. It is beneficial for a line card to provide a redundant data link that has a fail-over when an active port stops receiving activity.

Referring to Figure 4 of the present application, the data from the Main Port (102) flows to the Main PHY (104) that may translate or convert the data to GMII. The converted data is input to the Multiplexer (106) and depending upon the current active path, proceeds to the Primary PHY (108) and to the Primary Port (110) – or - to the Secondary PHY (112) and to the Secondary Port (114). The data flow can also flow in the reverse direction wherein the data enters the Primary Port and Primary PHY and/or Secondary Port PHY, wherein the data may be

converted. Depending upon which path is active, the Multiplexer allows the data to flow to the Main Port.

The Applicant's fail-over system employs the Switch On No Activity Received (SONAR), wherein if the active port remains inactive for a period of time, the system would switch to the secondary port. However, as noted on page 20 of the User Guide, the SONAR time period for the prior reference is fixed and switches when "[N]o data activity is detected on the active port for two (2) seconds." (Provided that the non-active port indicates activity) Thus, the prior references recite a fixed failover time period whereas the present invention is designed for a programmable time period.

The management logic/timer monitors the current activity indicated by the status lines from the Primary PHY and Secondary PHY, and when no activity is detected from the PHY of the active data path, a timer begins counting. The SONAR system of the User Guides is a fixed time, wherein the present invention is a programmable time set by the user. When that time is reached, and provided that the current inactive port has activity, then the traffic is routed to that inactive port thereby making it the active port.

Depending on the circumstance and applications, this fixed delay could be too low thereby switching unnecessarily or it could be too short which is inefficient. One of the features of the present invention uses a programmable time delay so the user has some control over the system and can optimize performance. This is especially applicable in the Gigabit Ethernet applications.

Therefore, the present invention employs a programmable time delay that is used to control the failover transfer. In one example, the user establishes the programmable time delay via the graphical user interface (GUI) of the computer. If there is a period of inactivity through the primary port that exceeds the programmable time delay, the system switches to a non-selected port. The user can therefore control the data flow and enhance system failover performance.

Applicant has amended the claims to clarify that the present invention incorporates a programmable time delay as one of the features of the present invention.

In a further distinction, according to one of the embodiments, the present invention works with Gigabit Ethernet (GiGE). As noted in the cited references, the Installation and User Guide refers to 100MBPS and 10MBPS – not Gigabit.

***Telephone Interview***

Present Office policy places great emphasis on telephone interviews initiated by the examiner. For this reason, it is not necessary for an attorney to request a telephone interview. Examiners are not required to note or acknowledge requests for telephone calls or state reasons why such proposed telephone interviews would not be considered effective to advance prosecution. However, it is desirable for an attorney to call the examiner if the attorney feels the call will be beneficial to advance prosecution of the application. MPEP§408.

Applicant believes the above amendments and remarks to be fully responsive to the Office Action, thereby placing this application in condition for allowance. No new matter is added. Applicant further requests speedy reconsideration, and further requests that Examiner contact its attorney by telephone, facsimile, or email for quickest resolution, if there are any remaining issues.

Respectfully submitted,

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